APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

No. 3:99-0373
Judge Echols

GOVINDASWAMY NAGARAJAN,
Plaintiff,

v.

SANDRA SCHEICK, in her official capacity and individually, BOBBY LOVETT, in his official capacity and individually, AUGUSTUS BANKHEAD, in his official capacity and individually, JAMES HEFNER, in his official capacity and individually, KIEYANA CARTER, ANDRE CHISLEY, JOSEPH DARNELL, JEROME DOOLEY, THEA ELIEZER, DURIEL GRAY, TRACY HENRIQUES, JAY JOHNSON, THEODORE KROTULSKI, TIMOTHY MAO, YOLANDA MCCALL, LEAH MCCLERKIN, CAMELIA MITCHELL, CHANE PRICE, JOAN ROGERS, KATRINA ROGERS, KEISHA SIMS, EBONY SMITH, CHARLES STAHL-BUSSELL, LESLIE TOOMER, SOUMAYAH WALTON, KALEA WHITMORE, MARITZA WILLIAMS, CEDRIC WORDS, and TENNESSEE STATE UNIVERSITY,
Defendants.

ORDER

Presently pending before the Court are the following Motions:

(1) Defendants' Motion to Dismiss filed by Defendants Scheick, Lovett, Bankhead, Hefner, and Tennessee State University (Doc. Entry No. 54);

(2) Defendants' Motion to Dismiss filed by Defendants Carter, Darnell, Dooley, Eliezer, Gray, Henriques, Krotulski, McCall, Mitchell, Sims, Stahl-Bussell, Walton, Whitmore, and Williams (Doc. Entry No. 57); and

(3) Motion to Dismiss filed by Defendant Chisley (Doc. Entry No. 65.

For the reasons discussed in the Memorandum contemporaneously entered herewith, Defendants' Motions are hereby GRANTED. Additionally, the claims against Defendants Johnson, Mao, McClerkin, Price, Joan Rogers, Katrina Rogers, Smith, Toomer, and Words are hereby DISMISSED SUA SPONTE.

Having dismissed all federal claims, the Court declines to retain jurisdiction over the remaining state law claims. Accordingly, this case is hereby DISMISSED.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
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Defendants.

MEMORANDUM

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(1) Defendants' Motion to Dismiss filed by Defendants Scheick, Lovett, Bankhead, Hefner, and Tennessee State University (Doc. Entry No. 54);

(2) Defendants' Motion to Dismiss filed by Defendants Carter, Darnell, Dooley, Eliezer, Gray, Henriques,

Krotulski, McCall, Mitchell, Sims, Stahl-Bussell, Walton, Whitmore, and Williams (Doc. Entry No. 57); and

(3) Motion to Dismiss filed by Defendant Chisley (Doc. Entry No. 65). Plaintiff has responded in opposition.

Plaintiff filed this Complaint alleging the following causes of action: (1) discrimination on the basis of age, in violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621-634 (1999) ("ADEA"); (2) discrimination on the basis of race and nationality, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-1—e-17 (1994) ("Title VII"); (3) violation of due process in violation of the Fourteenth Amendment; and (4) state law claims for breach of contract, defamation, and intentional infliction of emotional distress.

Defendants now move for dismissal pursuant to Rules 12(b) (1) and 12(b) (6) of the Federal Rules of Civil Procedure, stating the Court has no subject matter jurisdiction and the Complaint fails to state a claim upon which relief can be granted. For the reasons discussed below, Defendants' Motions are GRANTED, and the claims against them are DISMISSED. Additionally, because all claims brought against Defendants Johnson, Mao, McClerkin, Price, Joan Rogers, Katrina Rogers, Smith, Toomer, and Words are analogous to those brought against the other Defendants named in the Complaint and there are no distinguishing facts or legal issues, all claims against these Defendants are DISMISSED SUA SPONTE. As the Court has dismissed all federal claims alleged in the Complaint, the Court declines to exercise jurisdiction over the remaining state law claims, and the case is DISMISSED.

I. Facts

In evaluating a motion to dismiss, the Court must assume the truth of the factual allegations of the complaint and

liberally construe them in favor of the plaintiff. *Mobile Exploration & Producing U.S., Inc. v. Babbitt*, 913 F.Supp. 5, 9 (D.D.C. 1995); *see also Summit Health, Ltd. v. Pinhas*, 500 U.S. 322, 325 (1991). Accordingly, the following factual account is based on the allegations in Plaintiff's Complaint.

Defendant Tennessee State University ("TSU") is a comprehensive state university governed by the Tennessee Board of Regents. Defendant Hefner is TSU's President; Defendant Bankhead is Vice President of Academic Affairs; Defendant Lovett is Dean of the College of Arts and Sciences; and Defendant Scheick is acting Head of the Department of Physics and Mathematics. The remaining Defendants are students at TSU.

Plaintiff is a sixty-eight-year-old physics professor from Kalyanapuram, India who immigrated to the United States in 1962 and became a citizen in 1977. In 1980, he became an associate professor at TSU. Plaintiff was denied tenure at TSU in 1988 and his employment there was terminated at the end of the 1989-90 academic year. In 1997, he prevailed against TSU in an employment discrimination case based on the denial of tenure and the resulting termination, and he was reinstated at the rank of full, non-tenured professor, effective August, 1997. Plaintiff resumed his teaching duties at that time and was granted tenure in June, 1998.

Plaintiff's duties for the 1998-99 academic year included teaching Physics 211, a course with prerequisites of Mathematics 161 and/or 162, College Algebra, and Trigonometry. According to the Plaintiff, many of the Physics 211 students had not taken the prerequisite mathematics courses and could not solve simple linear equations. Because of the students' lack of background and preparation, Plaintiff was able to finish only ten of the twelve chapters intended to be included in the course.

Based on their difficult experiences in Plaintiff's classes, a number of students complained to Dr. Bobby Lovett, Dean of the College of Arts and Sciences, about Plaintiff's inadequacies as a professor, and five filed grievances regarding their low grades for the fall, 1998 semester. Some students in Plaintiff's Physics 211 class circulated a petition expressing their view of Plaintiff's shortcomings, and the petition, with numerous signatures, was submitted to the TSU administration.

In January of 1999, Dean Lovett gave copies of the complaints to Professor Sandra Scheick, acting Head of the Department of Physics and Mathematics, who provided copies to Plaintiff and asked him to meet with her to discuss the complaints. Apparently, Plaintiff declined to attend such a meeting. Instead, he merely asked Professor Scheick to remove the complaining students from his spring classes. Dean Lovett later informed Plaintiff that he had denied Plaintiff's request to exclude the students, and that the students who signed the petition would be allowed to remain in Plaintiff's classes.

In February of 1999, Plaintiff asked President Hefner to appoint a committee to investigate the student complaints. An investigation was performed with regard to the five students seeking grade changes, and the students were told there was no ground for changing their grades.

II. Standard of Review

It is well-settled that the Court's analysis under a motion to dismiss is narrow and limited. "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that recovery is very remote and unlikely but that is not the test." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Moreover, in reviewing a motion to dismiss for failure to state a claim upon which

relief may be granted, a court must review the complaint in the light most favorable to the plaintiff, construing all of its allegations in his or her favor. *Id.* A complaint should not be dismissed under Rule 12 (b) (6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [his or her] claim which would entitle [him or her] to relief." *Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). *See also Hishon v, King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley*); *G.M. Eng'rs & Assocs., Inc. v. West Bloomfield Township*, 922 F.2d 328, 330 (6th Cir. 1990) (citing *Dugan v. Brooks*, 818 F.2d 513, 516 (6th Cir. 1987)) ("[t]his court must accept all of the plaintiff's factual allegations as true and determine whether any set of facts consistent with the allegations would entitle the plaintiff to relief").

Pro se litigants' complaints are to be read particularly liberally, and are to be held to a less stringent standard than those drafted by attorneys; the complaints of *pro se* litigants should not be dismissed unless it is apparent beyond doubt that no set of facts can be proved in support of the claim entitling the litigant to relief. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Koff v. Butterworth*, 765 F.Supp. 716, 717 (M.D. Fla. 1991); *Meyer v. Curran*, 397 F.Supp. 512, 516 (D. Pa. 1975).

III. Analysis

A. The ADEA and Title VII Claims

It is well-settled that filing an EEOC charge is a jurisdictional prerequisite to filing a civil action under the ADEA. *Davis v. Sodexho*, 157 F.3d 460, 463 (6th Cir. 1998). Similarly, the "[t]imely filing of an EEOC complaint is a prerequisite to a Title VII suit." *EEOC v. Wilson Metal Casket Co.*, 24 F.3d 836, 839 (6th Cir. 1994).[1] Plaintiff filed

[1] In contrast to ADEA cases, the filing requirement is not jurisdictional in the Title VII context. Instead, it functions like a statute of limitations; it

no EEOC charge with regard to the conduct recited in the Complaint as the basis of his ADEA and Title VII claims. As such, the Court has no jurisdiction, and these claims are DISMISSED pursuant to Rule 12(b) (1).

B. Fourteenth Amendment Due Process Claims

The Fourteenth Amendment protects due process rights. Because the Sixth Circuit does not recognize a direct cause of action under the Fourteenth Amendment, *see, e.g., Thomas v. Shipka*, 818 F.2d 496, 503 (6th Cir. 1987), *vacated on other grounds*, 488 U.S. 1036 (1989); *Valerio v. Dahlberg*, 716 F.Supp. 1031, 1036 (S.D. Ohio 1988), district courts construe direct Fourteenth Amendment claims as though they were filed pursuant to 42 U.S.C. § 1983, *Jordan v. Moore*, ___ F.3d ___, 2000 WL 145368 (6th Cir. Feb. 2, 2000) (Table; text in Westlaw). A § 1983 plaintiff must prove that (1) the conduct at issue was committed by a person acting under color of state law; (2) the conduct caused a deprivation of a right secured by the Constitution or laws of the United States; and (3) the deprivation occurred without due process of law. *Claybrook v. Birchwell*, 199 F.3d 350, 354 (6th Cir. 2000).

As to the student Defendants, Plaintiff's Complaint fails at the first prong. Students are not state actors. *Chandler v. James*, 180 F.3d 1254, 1258 (11th Cir. 1999), *petition for cert. filed*, 68 U.S.L.W. 3391 (U.S. Dec. 2, 1999) (No. 99-935); *Yeo v. Town of Lexington*, 131 F.3d 241, 253 (1st Cir. 1997); *see Walton v. Alexander*, 44 F.3d 1297, 1299 (5th Cir. 1995). As such, they cannot violate anyone's due process rights. For this reason, all Fourteenth Amendment-based claims against the students are DISMISSED.

As to the TSU and the Defendant administrators, the Court construes the Complaint to allege that "the defendants arbitrarily and unreasonably interfered with his substantive

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must be met unless subject to waiver, estoppel, and equitable tolling. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982).

due process liberty interest in the free and full pursuit of his profession as a TSU professor," an interest articulated in *Parate v. Isibor*, 868 F.2d 821, 831 (6th Cir. 1989). A university unlawfully abridges this interest where its official acts are either (1) unreasonable and arbitrary and cause a deprivation of a substantive right specified in the constitution, or (2) forbidden no matter what procedural protections accompany them. *Id.* (applying formulation announced in *Wilson v. Beebe*, 770 F.2d 578 (6th Cir. 1985), that there are two types of substantive due process violations).

The facts on which Plaintiff bases his § 1983 claims against TSU and the Defendant administrators are as follows: the administration (1) allowed underqualified students to enroll in Plaintiff's classes, (2) received student complaints and attempted to address them, and (3) refused to remove complaining students from Plaintiff's class. None of these acts constitutes an unreasonable or arbitrary interference with Plaintiff's ability to pursue his profession fully arid freely. As such, they do not violate Plaintiff's right to due process. *See Parate* at 831.

Likewise, the acts do not constitute conduct so outrageous that the rights of the Plaintiff under the Fourteenth Amendment are violated. Although the facts alleged by Plaintiff may reflect negatively on the qualifications of the students enrolled in Plaintiff's physics classes at TSU, as well as the academic policies at the university, they fall within the range of autonomous decision-making allowed by academic institutions in the exercise of institutional academic freedom. *See Parate* at 826. The academic standards for TSU students and the eligibility requirements for academic credit are state matters within the jurisdiction of the university, the Board of Regents, and the Tennessee Higher Education Commission, not this Court. In summary, the acts complained of do not violate Plaintiff's right to substantive due process under the Fourteenth Amendment of the Constitution of the United States. *See Rochin v. California*, 342 U.S. 165, 172 (1952).

For these reasons, Defendants' Motion is GRANTED with regard to Plaintiff's Fourteenth Amendment claims, and the claims are DISMISSED.

IV. CONCLUSION

For the reasons discussed herein, Defendants' Motions are GRANTED as to Plaintiff's ADEA, Title VII, and Fourteenth Amendment claims, and the claims are hereby. DISMISSED. Additionally, the ADEA, Title VII, and Fourteenth Amendment claims brought against Defendants Johnson, Mao, McClerkin, Price, Joan Rogers, Katrina Rogers, Smith, Toomer, and Words are DISMISSED SUA SPONTE.

Having dismissed all federal claims, the Court declines to retain jurisdiction over the remaining state law claims, and these claims are likewise DISMISSED. Accordingly, this case is hereby DISMISSED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
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Judge Echols

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Defendants.

ORDER

Presently pending before the Court are the following Motions:

(1) State Defendants'[1] Motion to Strike, for Sanctions and for Permanent Injunction (Doc. Entry No. 83), to which Plaintiff responds in opposition, and

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[1] The State Defendants are Sandra Scheick, Bobby Lovett, Augustus Bankhead, James Hefner, and Tennessee State University.

(2) Plaintiff's Motion to Vacate Order of Dismissal (Doc. Entry No. 79), to which the State Defendants respond in opposition.

For the reasons discussed in the Memorandum contemporaneously entered herewith, the State Defendants' Motion is hereby GRANTED IN PART and DENIED IN PART. In particular, the Motion is GRANTED insofar as the State Defendants request an inventory of the items filed by Plaintiff under seal. That inventory is provided in the accompanying Memorandum. In all other respects, the Motion is DENIED.

Plaintiff's Motion is hereby DENIED. As this case has now been dismissed and Plaintiff's Motion to Vacate has been considered, it is hereby ORDERED that no further pleadings or submissions in this case shall be accepted from any party.

Finally, in light of Plaintiff's history of repeated filings of cases in this district, it is hereby ORDERED that Plaintiff is precluded from filing any new cause of action, either pro se or through counsel, in the United States District Court for the Middle District of Tennessee without obtaining leave of the Court. Plaintiff's failure to seek leave shall constitute grounds for the immediate dismissal of the action. In seeking leave of the Court, Plaintiff is hereby ORDERED to follow the procedure outlined in the accompanying Memorandum.

It is further ORDERED that the Court shall retain the authority to modify these provisions as circumstances warrant.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

No. 3:99-0373
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GOVINDASWAMY NAGARAJAN,

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Defendants.

MEMORANDUM

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(2) Plaintiff's Motion to Vacate Order of Dismissal (Doc. Entry No. 79), to which the State Defendants

respond in opposition. For the reasons discussed below, the State Defendants' Motion is GRANTED IN PART and DENIED IN PART, as described in particular herein, and Plaintiff's Motion is DENIED.

I. DEFENDANTS' MOTIONS

In the Memorandum filed in support of their pending motions to strike certain documents from the record, to sanction Plaintiff, and to impose a permanent injunction as to Plaintiff's possession and control of various academic records, the State Defendants express their concern and dismay as to two areas: first, that Plaintiff has filed a number of documents with the Court under seal in recent months, an action they deem to be in violation of the Court's Order of May 10, 1999; and second, that Plaintiff is in possession of various records which allegedly belong to Tennessee State University ("TSU").

In light of these concerns, the State Defendants have filed a single Motion in which they seek various forms of relief. In particular, the State Defendants move the Court to: (1) provide them with an inventory of the documents filed by Plaintiff under seal, "identifying the type of record, its date, the number of pages, the student to [whom] it is related and whether it is an original or a copy;" (2) strike said documents from consideration with regard to the pending motion for reconsideration and deliver said documents to State Defendants' counsel; (3) (a) enjoin Plaintiff permanently from engaging in the conduct previously temporarily enjoined by Order of this Court entered May 10, 1999, and from taking or copying academic records or documents from TSU for personal use, and (b) order Plaintiff to return to counsel "all academic records/documents in his custody or control unrelated to his TSU employment (not necessary to his current teaching duties);" and (4) assess sanctions against Plaintiff in light of his having filed students' academic records with the Court.

A. DEFENDANTS' REQUEST FOR INVENTORY OF ITEMS FILED UNDER SEAL

The State Defendants' request for an inventory is GRANTED, and the following list of documents filed by Plaintiff under seal is now provided pursuant to Defendants' request:

Documents filed under seal April 14, 2000:

(1) copy of letter dated December 9, 1998, from students 'in Plaintiff's Physics 211 class, listing seven areas of complaint and accompanied by a list of twenty students' signatures;

(2) copies of two physics exams on which Thea Eliezer's name is signed; one exam is dated December 9, 1998; the other is undated but entitled "Chapters 5-6;" no grades or social security numbers appear;

(3) copy of a hand-written attachment to a physics exam on which Charles Stahl-Bussell's name is hand-printed; the student attempted to answer nine exam questions on this attachment, all of which are marked incorrect; the student writes at the bottom of the page an uncharitable note expressing his frustration and dismay with regard to the class; no grade or social security number appears;

(4) copies of two physics exams on which Kieyana Carter's name is hand-printed, dated October 28 and December 9, 1998; no social security numbers appear; no grade appears on the October 28 exam, but a grade of '0' appears on the December 9 exam;

(5) copies of two physics exams on which Cedric Words's name is hand-printed, dated December 9, 1998, and May 5, 1999; no grades or social security numbers appear; the students notes on the May 5 exam "(Not in Right Mind) During this test;"

(6) copy of a physics exam on which Andre' Chisley's name is hand-printed, dated December 9, 1998; no grade or social security number appears;

(7) copy of an undated attachment to a physics exam on which Soumayah Walton's name is hand-printed; no grade or social security number appears;

(8) copy of a physics exam on which Jerome Dooley's name is hand-printed, dated December 9, 1998; no grade or social security number appears;

(9) copy of a physics exam on which Timothy Mayo's name is hand-printed, dated December 9, 1998; no grade or social security number appears;

(10) copy of a physics exam on which Leah McClerkin's name is signed, dated February 22, 1999; no social security number appears, but a grade of 10/100 appears at the top of the second page of the exam;

(11) copy of a physics exam on which Katrina Rogers's name is hand-printed, dated December 9, 1998; no grade or social security number appears; and

(12) copy of a physics exam on which Kalea Whitmore's name is hand-printed, dated December 9, 1998; no grade or social security number appears.

Documents filed under seal April 24, 2000:

(1) copy of grade and attendance records from Plaintiff's Physics 211 class which met at 1:00 p.m. on Mondays, Wednesdays, and Fridays in the Fall, 1998, semester; and

(2) copy of grade and attendance records from Plaintiff's Physics 212 class which met at 9:00 a.m. on Mondays, Wednesdays, and Fridays in the Fall, 1998, semester.

Documents filed under seal May 12, 2000:

(1) another copy of the letter dated December 9, 1998, from students in Plaintiff's Physics 211 class, listing seven areas of complaint and accompanied by a list of twenty students' signatures, as well as a second list including three additional signatures;

(2) xerographic enlargements of portions of the signature list accompanying the letter of December 9, 1998; and

(3) xerographic enlargements of the hand-printed or signed names of Thea Eliezer, Charles Stahl-Bussell, Kieyana Carter, Cedric Words, Andre' Chisley, Soumayah Walton, Jerome Dooley, Timothy Mayo, Leah McClerkin, Katrina Rogers, and Kalea Whitmore as they appear on the physics exams listed above.

B. DEFENDANTS' MOTION TO STRIKE

The State Defendants move the Court to strike the documents listed above from consideration with regard to Plaintiff's pending motion and to deliver these documents to their counsel, alleging that Plaintiff obtained the records in violation of the Federal Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2000) ("FERPA") and the Tennessee Confidential Records Act, Tenn. Code Ann. § 10-7-504 (4) (1999) ("TCRA"). The Court finds these allegations to be without merit.

1. The Alleged Violation of FERPA

As noted above, the documents submitted by Plaintiff (with the exception of the December 9 complaint) were attendance records, grade records, and examinations directly related to Plaintiff's physics classes. They were documents which Plaintiff created and/or possessed pursuant to his teaching duties. FERPA's protections do not preclude Plaintiff from possessing such documents or from filing them under seal with the Court.

By its plain language, FERPA excludes "records of instructional personnel," such as exam scores and grade records, from the scope of the "education records" protected by the statute. 20 U.S.C. § 1232g(a)(4)(B)(i)(2000). Even if such documents were deemed to be protected by FERPA, Plaintiff's filing the documents under seal suffices to protect the students' privacy to the extent required by FERPA. *See Bonnell v. Lorenzo*, 81 F.Supp.2d 777, 796-97 (E.D. Mich. 1999) (holding that professor who publishes student complaint with redacted name and class has met FERPA confidentiality requirements). Further, Plaintiff did not submit the documents with any apparent purpose to harass or humiliate. Rather, he submitted only the evidence necessary to support his allegation that certain students' signatures were forged. In light of the facts and circumstances presented, the Court finds Plaintiff's submission of the sealed documents at issue does not violate FERPA and that FERPA does not provide a basis for striking said documents.

2. The Alleged Violation of TCRA

The TCRA provides that "[the records of students in public educational institutions shall be treated as confidential." Tenn. Code Ann. § 10-7-504(4) (1999). Under the confidentiality requirement of § 10-7-504(4), student records "shall not be made available to unauthorized personnel of the institution or to the public or any agency," *id.*, with certain exceptions. These exceptions include the courts. *See Huntsville Util. Dist. of Scott County, Tenn. v. General Trust Co.*, 839 S.W.2d 397, 405-06 (Tenn. Ct. App. 1992) (Tennessee confidentiality statutes are intended to prevent routine public access to personal information, not to privilege such information from disclosure to courts); *State v. Fears*, 659 S.W.2d 370, 376 (Tenn. Crim. App. 1983) (confidentiality statute does not protect records subpoenaed to court at the request of any party to a litigation acting in good faith).

As with FERPA, there is no authority for the proposition that TCRA's protections extend to the sort of documents submitted by Plaintiff—that is, to examinations and class records maintained by a professor who taught the classes. Even if TCRA were applicable, however, Plaintiff's use of the documents falls within the exceptions allowed in *Huntsville Utility District* and *Fears*. In light of Plaintiff's having submitted the documents under seal and with minimally intrusive information, Plaintiff has not violated TCRA. As with FERPA, TCRA provides no basis for the Court to strike the submissions.

C. DEFENDANTS' MOTION FOR PERMANENT INJUNCTION AND TO OBTAIN PLAINTIFFS' RECORDS

The State Defendants also move the Court to (1) enjoin Plaintiff permanently from engaging in the conduct previously temporarily enjoined by Order of this Court entered May 10, 1999, and from taking or copying academic records or documents from TSU for personal use, and (2) order Plaintiff to return to counsel "all academic records/documents in his custody or control unrelated to his TSU employment (not necessary to his current teaching duties)."

By its Order of May 10, 1999, the Court enjoined Plaintiff from serving process on Defendants containing social security numbers of any of the Defendants in the case, and from disseminating or disclosing to third parties the social security numbers and any information contained in the exhibits placed under seal by the Order. The State Defendants allege Plaintiff violated this injunction by filing with the Court information that was protected from disclosure to third parties by the May 10 Order.[2] While this theory is inventive,

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[2] The State Defendants state: "Plaintiff was notified that said filing violated the Court's Order of May 10, 1999." The Court notes that this

the Court finds it is not a "third party" to whom it is inappropriate to reveal information which, while private and in some cases confidential, is relevant to the case.

The State Defendants also allege they are entitled to an injunction because Plaintiff's conduct is in violation of FERPA and TCRP. As discussed above, the Court finds Plaintiff's conduct is not in violation of these statutes. With regard to the allegation that Plaintiff copied records for his "personal use," it is true that Plaintiff submitted copies of class records within his possession and control, but there is nothing inappropriate in a professor's maintaining records as to exams his students have taken, their attendance in his classes, or their academic performance in his classes. The Court sees no need to enjoin this conduct.

Finally, the Court finds there is no evidence to suggest that Plaintiff is in possession or control of any records beyond those he has appropriately created and maintained with regard to his students. To the extent that Plaintiff might be in possession or control of records to which he is not entitled, the Court finds this is a matter to be addressed internally between TSU and Plaintiff. It is not an appropriate subject for a federal court order on the facts and circumstances presented.

For the foregoing reasons, the Court further finds the State Defendants have not met their burden to show they are entitled to the permanent injunction sought, and their Motion to this effect is DENIED.

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notification consisted of a Reply filed by The State Defendants to Plaintiff's Response to The State Defendants' Motion to Dismiss. Though said Reply suffices to put Plaintiff on notice of the State Defendants' position with regard to his conduct, it is not binding on Plaintiff or the Court as a determination that this conduct actually violated the Court's May 10 Order.

D. DEFENDANTS' MOTION FOR SANCTIONS

Finally, the State Defendants move the Court to assess sanctions against Plaintiff in light of his having filed students' academic records with the Court. The State Defendants allege said filing violates the Court's Order of May 10, 1999, as well as state and federal law. As discussed above, the Court finds these filings do not violate the Court's Order, FERPA, or TCRA. As such, the State Defendants have failed to show their entitlement to sanctions, and the Motion is DENIED in this respect.

II. PLAINTIFF'S MOTION

A. ALLEGED BASIS FOR RECONSIDERATION

Plaintiff now moves the Court, pursuant to Rule 60(b) (3) of the Federal Rules of Civil Procedure ("Rule 60(b) (3)") to vacate the Order entered March 30, 2000, dismissing his case. Plaintiff alleges he is entitled to this relief because certain Defendants falsified signatures on a letter of complaint regarding Plaintiff's physics class. As discussed above, this letter, dated December 9, 1998, appears to have been signed by about two dozen students in Plaintiff's Physics 211 class. Plaintiff now alleges that some or all of these signatures were forged, in an attempt to create a false complaint against him. He alleges the State Defendants conspired among themselves and with some of the students because of the State Defendants' racial and nationalistic biases against him, and in order to retaliate against him for his success in *Nagarajan v. Floyd*, No. 3:90-0055 (M.D. Tenn.).

In support of this allegation, Plaintiff has submitted xerographic reproductions of what he claims are authentic signatures of certain students. These signatures 'were copied from physics exams which were taken by the students and which have remained in Plaintiff's possession. Plaintiff avers that it is clear, from comparing the signatures on the exam

papers to the signatures on the complaint letter, that some students' signatures on the letter were forged.

B. STANDARD OF REVIEW

Rule 60(b)(3) provides that, on motion and upon such terms as are just, the court may relieve a party from a final order of dismissal in case of fraud, misrepresentation, or other misconduct of an adverse party. Fed. R. Civ. P. 60(b)(3). Rule 60(b)(3) requires the moving party to demonstrate that some willful or reckless "bad act" on the part of the adverse party adversely impacted the fairness of the relevant legal proceeding. *Jordan v. Paccar, Inc.*, 97 F.3d 1452, 1996 WL 528950, **6 (6th Cir. 1996) (Table; Text in Westlaw). Relief under Rule 60(b) (3) is an extraordinary remedy, granted only in exceptional circumstances, and therefore the party seeking such relief has the burden of establishing the misconduct and its impact by clear and convincing evidence. *A&B Steel Shearing & Processing, Inc. v. United States*, 174 F.R.D. 65, 67 (E.D. Mich. 1997) *Accord Genesis Properties v. Crown Life Ins. Co.*, 205 F.3d 1340, 2000 WL 178403, **3 (6th dir. 2000) (Table; Text in Westlaw); *Jordan*, 1996 WL 528950 at **6.

C. DISCUSSION

In spite of Plaintiff's averments, it does not appear to the Court that the documents he submitted under seal provide clear and convincing evidence that the State Defendants engaged in a conspiracy involving forged signatures in order to create a fictitious complaint against Plaintiff. The Court has examined the signatures on the letter of complaint and the signatures on the students' exams. It appears to the Court that any discrepancy between the appearance of the students' names on the letter versus the names on the exams is accounted for by the fact that the students signed the letter of complaint in cursive, whereas most of them printed their names on the exams. Moreover, there are many similarities

apparent between each student's signature and his or her name as it appears on his or her exam. No affidavits have been submitted from any students stating that their signatures were forged on the letter of complaint. In light of these facts and circumstances, the Court finds no basis on which to conclude that the signatures on the letter are not genuine.

Moreover, even if the Court found that the documents submitted under seal provided clear and convincing evidence that the signatures had been forged, this would provide no basis for relief under Rule 60(b)(3).

As explained in the Court's Memorandum of March 30, 2000, Plaintiff's ADEA and Title VII claims were dismissed because Plaintiff failed to file a complaint with the Equal Employment Opportunity Commission before filing his case in federal district court. The Fourteenth Amendment Due Process claims against the student-Defendants, deemed to be filed pursuant to 42 U.S.C. § 1983 ("§ 1983"), were dismissed because the students are not state actors. Even if the newly submitted documents were deemed to show by clear and convincing evidence that the State Defendants forged student signatures on a complaint against Plaintiff, the Court's analysis would not differ as to these claims.

Plaintiff's Fourteenth Amendment Due Process claims against the State Defendants, also deemed to be § 1983 claims, were dismissed because the State Defendants' conduct did not constitute a due process violation under the standard set forth in *Parate v. Isibor*, 868 F.2d 821 (6th Cir. 1989). If it were shown that the State Defendants did conspire to create a false complaint against Plaintiff, to which they forged students' signatures, their conduct would likely be deemed a violation of Plaintiff's due process rights and might be viewed as outrageous. However, as discussed above, the only evidence submitted in support of such a theory was the set of documents recently filed by Plaintiff under seal. Having compared the signatures on the exams

with the signatures on the letter, the Court finds no evidence to suggest that the signatures on the letter were forged. Certainly, the documents fail to show by clear and convincing evidence that the State Defendants have run afoul of the Fourteenth Amendment. As such, they do not provide a basis for relief under Rule 60(b)(3).

For the foregoing reasons, Plaintiff's Motion to Vacate is DENIED.

III. CONCLUSION

For the reasons discussed above, The State Defendants' Motion is GRANTED IN PART and DENIED IN PART. In particular, the Motion is GRANTED insofar as the State Defendants request an inventory of the items filed by Plaintiff under seal, and that inventory is provided herein. In all other respects, the Motion is DENIED. Plaintiff's Motion is likewise DENIED.

As this case has now been dismissed and the Court has now thoroughly reviewed that decision, it is ORDERED that no further pleadings or submissions in this case shall be accepted from any party, with the exception of a Notice of Appeal.

Finally, in light of Plaintiff's history of repeated filings of cases in this district,[3] it is ORDERED that Plaintiff is

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[3] These cases include, in addition to the one at bar:

Nagarajan v. Floyd, No. 3:90-0055 (employment discrimination complaint filed January 24, 1990 against Tennessee State University, the Tennessee Board of Regents, and others) (judgment for Plaintiff entered June 4, 1997) (judgment affirmed by Sixth Circuit on July 21, 1999); *Nagarajan v. Williams*, No. 3:96-1063 (section 1983 action against Tennessee Department of Safety and others) (orders granting judgment in favor of defendants entered June 12, 1997, and October 8, 1997) (judgment affirmed by Sixth Circuit, December 28, 1998); *Nagarajan v. Jones*, No. 3:98-0629 (employment discrimination case against the General Board of

precluded from filing any new cause of action, either pro se or through counsel, in the United States District Court for the Middle District of Tennessee without obtaining leave of the Court. Plaintiff's failure to seek leave shall constitute grounds for the immediate dismissal of the action.

In seeking leave of the Court, Plaintiff must file a "Motion Pursuant to Court Order Seeking Leave to File" and attach to it a copy of his proposed complaint. To any such motion, Plaintiff must attach a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746 or his sworn affidavit certifying to the Court that his claims have not been previously presented, are not similar to those of any past complaint, and are not frivolous or otherwise made in bad faith.

It is further ORDERED that the Court shall retain the authority to modify these provisions as circumstances warrant.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

Discipleship and others) (order granting partial judgment in favor of defendants entered February 3, 1999) (jury trial set for November 14, 2000); and *Nagarajan v. Nichols*, No. 3:99-0385 (section 1983 action) (magistrate judge's Report and Recommendation entered April 12, 2000, recommending dismissal for failure to state a claim and lack of subject matter jurisdiction).

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Filed Mar. 16, 2001]

No.00-5896

GOVINDASWAMY NAGARAJAN,
Plaintiff-Appellant,

v.

SANDRA SCHEICK, in her official capacity and individually, BOBBY LOVETT, in his official capacity and individually, AUGUSTUS BANKHEAD, in his official capacity and individually, JAMES HEFNER, in his official capacity and individually, KIEYANA CARTER, ANDRE CHISLEY, JOSEPH DARNELL, JEROME DOOLEY, THEA ELIEZER, DURIEL GRAY, TRACY HENRIQUES, JAY JOHNSON, THEODORE KROTULSKI, TIMOTHY MAO, YOLANDA MCCALL, LEAH MCCLERKIN, CAMELIA MITCHELL, CHANE PRICE, JOAN ROGERS, KATRINA ROGERS. KEISHA SIMS, EBONY SMITH, CHARLES STAHL-BUSSELL, LESLIE TOOMER, SOUMAYAH WALTON, KALEA WHITMORE, MARITZA WILLIAMS, CEDRIC WORDS, and TENNESSEE STATE UNIVERSITY,
Defendants-Appellees.

Before: COLE and GILMAN, Circuit Judges, ALDRICH, District Judge.*

Govindaswamy Nagarajan, a Tennessee resident proceeding *pro se*, appeals a district court order denying his motion for post-judgment relief in this discrimination action. This case has been referred to a panel of the court pursuant to Rule

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* The Honorable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking sixty million dollars in damages, Nagarajan sued Tennessee State University ("TSU"), four members of the TSU administration, and twenty-four TSU students. Nagarajan alleged that the defendants conspired to discriminate against him on the basis of age, race, and nationality in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 623(a)(1); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5; due process; and state law when the students filed a written complaint about his teaching and the TSU administration officials did not take appropriate action. The TSU defendants and some of the student defendants filed motions to dismiss under Fed. R. Civ. P. 12(b)(1) and (6). In an order entered March 30, 2000, the district court granted the motions and sua sponte dismissed the action with respect to the remaining student defendants. Nagarajan filed a motion to vacate the order under Fed. R. Civ. P. 60(b)(3) on April 14, 2000, alleging that the defendants forged signatures on the students' letter of complaint. The district court denied the motion in an order entered June 28, 2000. It is from that order that Nagarajan appeals.

On appeal, Nagarajan argues that: (1) he established that some of the students' signatures on the letter of complaint were forged; and (2) the district court overlooked the statements from seven students that they signed the letter of complaint without knowing its contents.

Initially, we note that the only issue in this appeal concerns the propriety of the district court's decision to deny Nagarajan's post-judgment motion. The underlying judgment is not reviewable because the notice of appeal was filed more than thirty days after entry of the judgment. *See* Fed. R. App. P. 4(a); *Browder v. Director, Dep't of Corr. Of Ill.*, 434 U.S.

257, 264 (1978). Moreover, the notice of appeal specifically states that the appeal is taken from the June 28, 2000, order denying the Rule 60 motion. *See* Fed. R. App. P. 3(c)(1)(B); *United States v. Universal Mgmt. Servs.*, 191 F.3d 750, 756-57 (6th Cir. 1999), *cert. denied*, 120 S. Ct. 2740 (2000). Thus, only the district court's ruling on Nagarajan's Rule 60(b)(3) motion is properly before this court.

This court reviews a district court's denial of a Rule 60(b) motion for an abuse of discretion. *Thompson v. Am. Home Assur. Co.*, 95 F.3d 429, 433 (6th Cir. 1996).

Upon review, we conclude that the district court did not abuse its discretion when the court denied Nagarajan's Rule 60(b)(3) motion because Nagarajan did not establish fraud by clear and convincing evidence. *See Simons v. Gorsuch*, 715 F.2d 1248, 1253 (7th Cir. 1983). He attempted to cast doubt on the authenticity of the students' signatures on the petition by comparing them with their names as written on tests. The district court found that the signatures were similar, and that most of the discrepancies could be attributed to the fact that many of the students printed their names on the exams but signed the petition in cursive. Moreover, Nagarajan did not submit proof from any of the students that the signatures were forged. We are not persuaded that the district court relied on clearly erroneous findings of fact, improperly applied the law, or used an erroneous legal standard. *See Romstadt v. Allstate Ins. Co.*, 59 F.3d 608, 615 (6th Cir. 1995).

Nagarajan's argument that he has proved that the signatures were forged because the students did not oppose his Rule 60(b)(3) motion or sign affidavits declaring that the signatures on the letter of complaint were authentic is without merit. Nagarajan, not the students, had the burden of proof. *See Simons*, 715 F.2d at 1253.

Nagarajan's argument that the district court overlooked the statements from seven students that they signed the letter of complaint without knowing its contents is also without merit.

First, these were unsworn statements. A district court may consider matters outside the pleading when ruling on a motion to dismiss and treat the motion as one for summary judgment. *See* Fed. R. Civ. P. 12(b); *Salehpour v. Univ. of Tenn.*, 159 F.3d 199, 204 (6th Cir. 1998). To be considered under Rule 56, however, statements must be admissible and sworn. *See* Fed. R. Civ. P. 56(e); *Carter v. Western Reserve Psychiatric Habilitation Ctr.*, 767 F.2d 270, 273 n.2 (6th Cir. 1985). Second, even if accepted as true, the statements establish only that other students requested the signatures. The students could not be liable because they are not state actors, *see Flagg Bros. v. Brooks,* 436 U.S. 149, 155-57 (1978), and the statements would not have established that the TSU defendants were liable to Nagarajan.

For the foregoing reasons, we affirm the district court's order. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Illegible
Clerk

APPENDIX D

STATE OF TENNESSEE)
)
COUNTY OF MONTGOMERY)

IN RE: *DR. GOVINDASWAMY NAGARAJAN PETITION SIGNATURES*

AFFIDAVIT

I, Marty Pearce, under penalty of perjury, do hereby state:

1. I am a Certified Document Examiner and have given sworn testimony in open court concerning the authenticity of handwritten documents. I have been qualified as an expert in handwriting analysis.

2. I graduated from Central High School in Memphis, Tennessee, in 1961. I subsequently received my certification as a Document Examiner from the Institute of Graphological Science in October of 1989.

3. I am self-employed as a handwriting analyst and document examiner and devote a minimum of 40 hours a week to my business.

4. I have been approved to teach classes in Handwriting Analysis at Nashville Technical School since 1989, and approved to teach Document Examination at Glencliff Community Education since 1993.

5. I have written articles regarding document examination, two of which were published in "For The Defense", a bi-monthly newsletter of the Tennessee Association of Criminal Defense Lawyers. On numerous occasions I have spoken to professional organizations regarding my subject.

6. I have given expert testimony at trial in various counties throughout Tennessee since 1989. I have

appeared in Circuit, Chancery, Probate, Federal and Criminal Courts, as an expert witness.

7. I have been employed as a document examiner by a large volume of attorneys since 1989, a list of which is attached as well as a copy of my Curriculum Vitae.

8. I have examined and compared the signatures of THEA ELIEZER, CHARLES STAHL-BUSSELL, KALEA WHITMORE, KIEYANA CARTER, and ANDRE' CHISLEY, on a photocopy of a *PETITION* submitted to me by Dr. Govindaswamy Nagarajan.

Documents used as exemplars came from classrolls and test papers of these five students. Dr. Nagarajan, their professor, provided photocopies of those records to me for comparison purposes. Copies of those documents are attached to this affidavit.

9. I requested of Dr. Nagarajan samples of the five student's signatures in cursive writing, not printing. He stated that the five students NEVER write in script, but only print their name, therefore, no such known samples exist. I was instructed to proceed with the known samples already provided, which I did. The results of my examination are based upon photocopies of those known samples which makes my opinion *"qualified."* The results are as follows:

> THEA ELIEZER—Although I found some strong similarities in the formation of the Thea" in Thea, I was unable to explain the difference in the cursive capital "T". I also noted the likenesses in the pen lifts, and the stroke formations in the last name, Eliezu, but the capital "E" is not in keeping with this student's habit. Please notice the top of the "E" which favors the figure "8". Because of these two distinct deviations from the writer's habit, I am unable to conclude with 100% certainty that this signature is genuine.

CHARLES STAHL-BUSSELL—Although the capital "B" in Bussell looks like the printed known samples, the capital "s" is different because it is in script. The "C" in Charles is also in cursive which explains the connectedness on the petition. The baseline is also very irregular in both cases. If, in fact, Mr. Charles Stahl-Bussell writes only in print, then the signature would have to be forged. Without requested (or forced) known samples of his signature in cursive, I cannot be certain whether or not the signature on the petition is genuine.

KALEA WHITMORE—There appears to be an extra downstroke on the end of the "K" in Kalea which could indicate that somebody is trying to simulate her signature. The lower case "a" in Kalea is in the form of a tear-drop and too angular to be her usual writing. The capital "W" does not fit into her habit, nor does the balance of her last name written in cursive. This signature is possibly a forgery, but I cannot be certain without cursive samples.

KIEYANA CARTER—The lower loop of the "y" in Kieyana does not often return and rise above the baseline as it does in the signature on the petition. Furthermore, the initial downstroke in the "n" in Kieyana is usually retraced, but this time it juts to the right. The capital "C" encroaches upon the final "a" in Kieyana. I did not see this in any of the known samples. Again, I see many similarities as well, and would need more samples of her known cursive writing to be certain If this signature is genuine or forged.

ANDRE' CHISLEY—Without known cursive signatures, I cannot say if this signature is genuine or forged. About the only comparison I can make

from this sample is that the dot over the "i" on the petition is more to the right than usual. The capital "C" in Chisley is more embellished than usual, but it *is* in script.

My opinion is based upon numerous points which include, but are not limited to the following: slant, size, speed, fluidity, stroke formation, style, margins, baseline, letter proportions, rhythm, etc.

Further affiant saith not.

/s/ Marty Pearce,
MARTY PEARCE, CDE, CGA

STATE OF TENNESSEE
COUNTY OF MONTGOMERY

SWORN TO AND SUBSCRIBED BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, THIS THE 14TH DAY OF SEPTEMBER, 2000.

/s/ Illegible
Notary Public

My Commission Expires: 4-12-2004

APPENDIX E

STATE OF FLORIDA
COUNTY OF SEMINOLE

AFFIDAVIT OF THOMAS W. VASTRICK

BEFORE ME the undersigned authority personally appeared Thomas W. Vastrick, who after first being duly sworn deposes and says:

1. My name is Thomas W. Vastrick. I maintain offices in Maitland, FL and Memphis, TN.

2. I am a board certified forensic document examiner with over 23 years of experience, competent to make this Affidavit and all statements made herein are based on my personal knowledge.

3. I completed a two-year training program with the U.S. Postal Inspection Service. I am certified by the American Board of Forensic Document Examiners. I am a member of the American Society of Questioned Document Examiners, The American Academy of Forensic Sciences (Questioned Documents Section), and The Southeastern Association of Forensic Document Examiners. I have testified over 150 times in federal, state, local courts, arbitration and administrative law hearings and military hearings including numerous circuit, chancery and criminal courts in the State of Tennessee. I have written and had published numerous original research articles both in the United States and overseas and have conducted lectures and workshops to law enforcement, corporate loss prevention, law firms and fellow document examiners.

4. It was requested that I conduct examinations of certain signatures from a copy of one Petition Signatures form (undated) bearing twenty-four

different signature entries. Specifically, it was requested that I conduct an examination of the signatures in the names of Thea Eliezer, Kieyana Carter, Charles Stahl-Bussell, Andre Chisley, and Kalea Whitmore and compare these entries to the corresponding submitted known specimen signatures from each of the aforementioned named subjects.

5. My findings with regards to this examination are as follows:

   A. Charles Stahl-Bussell cannot be associated with the signature entry in his name. The submitted specimens of Stahl-Bussell are of a printed format while the questioned signature is of a cursive format. As such, a full examination cannot be made. Should Stahl-Bussell habitually print his signature, the questioned signature being of a cursive format should be considered a significant difference.

   B. Andre Chisley cannot be associated with the signature entry in his name. The submitted specimens of Chisley are of a printed format while the questioned signature is of a cursive format. As such, a full examination cannot be made. Should Chisley habitually print his signature, the questioned signature being of a cursive format should be considered a significant difference.

   C. Kalea Whitmore cannot be associated with the signature entry in her name. The submitted specimens of Whitmore are of a printed format while the questioned signature is of a cursive format. As such, a full examination cannot be made. Should Whitmore habitually print her signature, the questioned signature being of a

cursive format should be considered a significant difference.

D. Based on the specimens provided there are significant difference which indicate that someone other than Kieyana Carter wrote this entry. The differences which provided the basis for this conclusion include the shape of the upper diagonal stroke of the upper case "K" which curves in a different angle from that of the submitted known specimens; the relative heights of the upper case to lower case letters; the shape of the lower extender of the lower case "y"; the spacing between the first and last name; and the size and shape of the loop of the lower case "e". This is a limited finding due, in part, to not having the original questioned document.

E. Similarities were noted between the questioned Thea Eliezer and the submitted known Thea Eliezer specimens. However, differences were also noted between these writings. As such, Thea Eliezer cannot be identified with having written this signature entry based on the specimens provided. The differences noted consist of the design of the upper case characters.

6. Attached is a copy of my Forensic Document Examination Report outlining the results of my examination and specifically listing the documents utilized in these examinations. (Attachment A)

7. Attached is a copy of my curriculum vitae outlining in detail my professional training and experience. (Attachment B)

8. FURTHER AFFIANT SAYETH NAUGHT.

/s/ Thomas W. Vastrick
Signature of Affiant

Sworn and subscribed to this 23rd day of October, 2000.

/s/ Jackie Diane Crocker
Signature of Notary

My commission expires 7-21-2001

THOMAS W. VASTRICK
FORENSIC DOCUMENT EXAMINER
September 18, 2000

Mr. Govindaswamy Nagarajan
4245 Valley Grove Dr.
Hermitage, TN 37076-2642

File No. 001631

ATTACHMENT A

FORENSIC DOCUMENT EXAMINATION REPORT

Problem

Determine whether Thea Eliezer, Kieyana Carter, Charles Stahl-Bussell, Andre Chisley, or Kalea Whitinore, as represented by the submitted known handwriting specimens, wrote their corresponding name entries on the submitted questioned document.

The submitted questioned document consists of the following:

Q-1 Copy of one Petition Signatures form (undated) bearing 24 signature entries.

The submitted known handwriting specimens of Thea Eliezer consist of the following:

K-1a Copy of one six-page Physics 211 test dated December 9, 1998.

The submitted known handwriting specimens of Kieyana Carter consist of the following:

K-2a Copy of one attendance form dated August 25, 1998.

K-2b Copy of one attendance form dated September 1, 1998.

K-2e Copy of one attendance form dated September 8, 1998.

K-2d Copy of one attendance form dated September 22, 1998.

K-2e Copy of one attendance form dated September 29, 1998.

K-2f Copy of one attendance form dated October 20, 1998.

K-2g Copy of one attendance form dated October 27, 1998.

K-2h Copy of one attendance form dated November 3, 1998.

K-2i Copy of one Physics 211 test dated October 28, 1998.

The submitted known handwriting specimens of Charles Stahl-Bussell consist of the following:

K-3a Copy of one attendance form dated August 27, 1998.

K-3b Copy of one attendance form dated September 10, 1998.

K-3c Copy of one attendance form dated September 17, 1998.

K-3d Copy of one attendance form dated September 24, 1998.

K-3e Copy of one attendance form dated October 8, 1998.

K-3f Copy of one test worksheet marked Exhibit 9H.

The submitted known handwriting specimens of Andre Chisley consist of the K-3 documents along with the following:

K-4a Copy of one Physics 211 test dated December 9, 1998.

The submitted known handwriting specimens of Kalea Whitmore consist of the following:

K-5a Copy of one Physics 211 test dated December 9, 1998.

Findings

Charles Stahl-Bussell (K-3), Andre Chisley (K-4), and Kalea Whitmore (K-5) cannot be associated with their corresponding signature entries on Exhibit Q-1. The signatures in question reflect a cursive form and the submitted known specimens reflect a printed signature form.

Thea Eliezer (K-1) cannot be identified with the questioned Eliezer signature entry on Exhibit Q-1. This finding was based on characteristics found within the questioned signature entry which were not fully reflected within the submitted known K-1 specimens.

Examination of the questioned Kieyana Carter signature entry on Exhibit Q-1 and comparison with the submitted known K-5 specimens revealed differences which indicate that this entry was written by someone other than Carter (K-5), based on the specimens provided.

/s/ Thomas W. Vastrick
THOMAS W. VASTRICK
Forensic Document Examiner

APPENDIX F

STATE OF TENNESSEE)
)
COUNTY OF MONTGOMERY)

IN RE: *DR. GOVINDASWAMY NAGARAJAN PETITION SIGNATURES*

AFFIDAVIT

I, Marty Pearce, under penalty of perjury, do hereby state:

1. I am a Certified Document Examiner and have given sworn testimony in open court concerning the authenticity of handwritten documents. I have been qualified as an expert in handwriting analysis and document examination.

2. I graduated from Central High School in Memphis, Tennessee, in 1961. I subsequently received my certification as a Document Examiner from The Institute of Graphological Science in October of 1989.

3. I am self-employed as a handwriting analyst and document examiner and devote a minimum of 40 hours a week to my business.

4. I have been approved to teach classes in Handwriting Analysis at Nashville Technical School since 1989, and approved to teach Document Examination at Glencliff Community Education since 1993.

5. I have written articles regarding document examination, two of which were published in "For The Defense", a bi-monthly newsletter of the Tennessee Association of Criminal Defense Lawyers. On occasion I have spoken and presented workshops to professional organizations regarding my subject.

6. I have given expert testimony at trial in various counties throughout Tennessee since 1989. I have appeared in Circuit, Chancery, Probate, Federal and Criminal Courts, as an expert witness.

7. I have been employed as a document examiner by a large volume of attorneys since 1989, a list of which is attached as well as a copy of my Curriculum Vitae.

8. I have examined and compared the signature of TIMOTHY MAYO on a photocopy of a document titled. "*PETITION SIGNATURES*" submitted to me by Dr. Govindaswamy Nagarajan.

9. Photocopies of eleven (11), Physics I, sign-in sheets were used as exemplars. They are dated from January 24, 2001 through February 16, 2001. One other exemplar used was a short statement by Mr. Mayo stating his first time to attend the class.

10. It is my 'qualified' opinion that the signature of Mr. Timothy Mayo has *more likely than not* been forged. I request the opportunity to view the original documents prior to court testimony.

11. My opinion is based upon the specimens provided and numerous points which include, but are not limited to the following: slant, size, speed, fluidity, stroke formation, style, margins, baseline, letter proportions, rhythm, directional movement, etc.

12. Attached you will find copies of all documents from which I worked.

Further affiant saith not.

/s/ Marty Pearce
MARTY PEARCE, CDE, CGA

STATE OF TENNESSEE
COUNTY OF MONTGOMERY

SWORN TO AND SUBSCRIBED BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE THIS THE 21ST DAY OF FEBRUARY, 2001.

/s/ Illegible
Notary Public

My Commission Expires: 4-12-2004